

Regular Session, 2010

SENATE BILL NO. 739

BY SENATOR MORRISH

ENERGY DEVELOPMENT. Provides relative to the Louisiana Carbon Capture and Enhanced Oil Recovery Act. (8/15/10)

AN ACT

To enact Chapter 10 of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 30:1001 through 1005, and R.S. 39:94(A)(2)(a)(iv), relative to the Louisiana Carbon Capture and Enhanced Oil Recovery Act; to provide relative to enhanced oil and gas recovery projects utilizing injection of carbon dioxide; to provide for the duties and powers of the secretary of the Department of Natural Resources; to provide definitions, terms and conditions; to establish a special custodial trust fund; to provide for the uses of certain monies deposited into such fund; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 10 of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 30:1001 through 1005 is hereby enacted to read as follows:

**CHAPTER 10. LOUISIANA CARBON CAPTURE AND ENHANCED OIL
RECOVERY ACT**

§1001. Short title

**This Chapter shall be known and may be cited as the "Louisiana Carbon
Capture and Enhanced Oil Recovery Act".**

1 **§1002. Policy; jurisdiction**

2 **A. It is declared to be in the public interest for a public purpose and the**
3 **policy of Louisiana that:**

4 **(1) The capture and geologic sequestration of carbon dioxide will benefit**
5 **the citizens of the state and the state's environment by reducing greenhouse gas**
6 **emissions.**

7 **(2) Carbon dioxide is a valuable commodity to the citizens of the state**
8 **through its use for enhanced oil or gas recovery.**

9 **(3) The citizens of the state and the state's economy and environment**
10 **will benefit from industrial processes that will capture significant amounts of**
11 **carbon dioxide for use in enhanced oil recovery.**

12 **(4) It is the public policy of Louisiana and the purpose of this Chapter**
13 **to provide for and enable the development of projects which produce carbon**
14 **dioxide as a by-product that is captured and suitable for injection for enhanced**
15 **oil or gas recovery.**

16 **B. The secretary shall have jurisdiction and authority over all persons**
17 **and property necessary to enforce effectively the provisions of this Chapter**
18 **relating to carbon dioxide produced as a by-product and captured by qualified**
19 **low carbon energy projects.**

20 **§1003. Definitions**

21 **Unless the context otherwise requires, the words defined in this Section**
22 **shall have the following meaning when found in this Chapter:**

23 **(1) "Carbon dioxide" means anthropogenically sourced carbon dioxide**
24 **including its derivatives and all mixtures, combinations, and phases, whether**
25 **liquid or gaseous, stripped, segregated, or divided from any other fluid stream**
26 **thereof.**

27 **(2) "Department" means the Department of Natural Resources.**

28 **(3) "Enhanced oil or gas recovery" means the use of carbon dioxide for**
29 **purposes of tertiary or secondary recovery of oil or gas.**

1 (4) "Fund" means the Carbon Dioxide Project Incentive Fund
2 established in R.S. 30:1005.

3 (5) "Gas" has the same meaning as provided in R.S. 30:3(5).

4 (6) "Oil" has the same meaning as provided in R.S. 30:3(4).

5 (7) "Person" means any natural person, corporation, association,
6 partnership, limited liability company, or other entity, receiver, tutor, curator,
7 executor, administrator, fiduciary, or representative of any kind.

8 (8) "Qualified low carbon energy project" means a project that
9 produces at least two hundred fifty thousand tons per year of carbon dioxide
10 and captures at least fifty percent of such eligible carbon dioxide produced by
11 such project suitable for injection for enhanced oil or gas recovery.

12 (9) "Secretary" means the secretary of the Department of Natural
13 Resources.

14 §1004. Duties and powers of the secretary; rules and regulations

15 A. The departments's actions under this Chapter shall be directed and
16 controlled by the secretary. In order to encourage enhanced oil or gas recovery
17 projects utilizing injection of carbon dioxide, the secretary shall have the
18 authority to certify, based on the evaluation of the technology assessment
19 division of the department, any project as a qualified low carbon energy project
20 if the project commences construction on or before December 31, 2020, and
21 meets the requirements of R.S. 30:1003(8).

22 B. Upon making such determination, the secretary shall issue a
23 certificate to the project that such project is a qualified low carbon energy
24 project.

25 C. Upon issuance of the certificate certifying a project as a qualified low
26 carbon energy project:

27 (1) The Public Service Commission is granted jurisdiction to entertain
28 a request by any qualified low carbon energy project for a rate order from the
29 Public Service Commission that includes a request that the Public Service

1 Commission utilize the fund as provided in R.S. 30:1005, and any ensuing order
2 of the Public Service Commission granting such request shall require the
3 project to deposit with the Public Service Commission, upon commercial
4 operation, up to one hundred fifty million dollars ("initial deposit") depending
5 on the size or portion of the project subject to the order. The initial deposit
6 shall be held in trust and controlled by the Public Service Commission through
7 a third-party administrator, with the expenses of the administration of such
8 fund to be paid from the initial deposit, but such deposit, unless and until used
9 by the Public Service Commission as provided herein, shall remain the property
10 of the owner of the qualified low carbon energy project which made the initial
11 deposit.

12 (2) The secretary shall do the following:

13 (a) Make the monies in the fund attributable to any qualified low carbon
14 energy project that obtains a rate order from the Public Service Commission
15 available to be utilized by the Public Service Commission, upon request by the
16 Public Service Commission and presentation of documentation supporting such
17 request, to offset or ameliorate the effect of such project on the electric bills of
18 the ratepayers under its jurisdiction after the commercial operation date of the
19 project, as provided in R.S. 30:1005, but only after the initial deposit has been
20 exhausted.

21 (b) Make the monies in the fund available to any qualified low carbon
22 energy project to the extent such project is not subject to any rate order of the
23 Public Service Commission, in accordance with an irrevocable and binding
24 agreement with the department, to offset, reimburse or ameliorate capital costs
25 or debt service incurred by the owner of such project and related to such
26 project after its commercial operation date, as provided in R.S. 30:1005.

27 D. Notwithstanding any provision of law to the contrary, the secretary
28 shall provide to the Public Service Commission or to a qualified low carbon
29 energy project, to the extent such project is not subject to any rate order of the

1 Public Service Commission, with monies from the fund that are generated
2 through enhanced oil or gas recovery utilizing carbon dioxide from such
3 project. Monies in the fund generated by enhanced oil or gas recovery
4 attributable to one project shall not be provided to or for the benefit of another
5 project. If a portion of the output of a project is subject to a rate order of the
6 Public Service Commission, the monies in the fund attributable to enhanced oil
7 or gas recovery utilizing carbon dioxide from the portion of the project that is
8 subject to a rate order of the Public Service Commission will be provided
9 exclusively to the Public Service Commission and the monies in the fund
10 attributable to enhanced oil or gas recovery utilizing carbon dioxide from the
11 portion of the project that is not subject to a rate order of the Public Service
12 Commission will be provided exclusively to the owner of the project.

13 E. Once the secretary issues the certificate and determines the
14 appropriate recipient of monies from the fund, such monies are dedicated and
15 obligated to the purposes and uses authorized by this Chapter and may not be
16 used for any other purpose.

17 §1005. Carbon Dioxide Project Incentive Fund

18 A.(1) There is hereby established a fund in the custody of the state
19 treasurer to be known as the Carbon Dioxide Project Incentive Fund,
20 hereinafter referred to as the "fund", which shall constitute a special custodial
21 trust fund which shall be administered by the secretary, who shall make
22 disbursements from the fund solely in accordance with the purposes and uses
23 authorized by this Chapter.

24 (2) The fund shall not be used for any other governmental purposes, nor
25 shall any branch of government be allowed to borrow any portion of the funds.
26 It is the intent of the legislature that this fund and its increments shall remain
27 intact and inviolate.

28 (3) The monies in the fund shall be invested by the treasurer in the same
29 manner as monies in the state general fund. All interest earned on the money

1 invested from the fund by the state treasurer shall be credited to the fund. All
2 unexpended and unencumbered monies in the fund at the end of the fiscal year
3 shall remain in the fund, except as provided in Subsection E of this Section.

4 (B) Fifty percent of royalties, rentals, bonuses and payments due to the
5 state and attributable to enhanced oil or gas recovery related to injection of
6 carbon dioxide produced from qualified low carbon energy projects shall be
7 deposited into the fund, but only after the amount provided in Article VII,
8 Section 10.3(A)(2)(a) of the Constitution of Louisiana and R.S. 39:94(A)(2)(a),
9 referred to as the "base", has been satisfied each fiscal year, and which fifty
10 percent portion shall be applied only to the increase in production of oil or gas
11 resulting from the injection of such carbon dioxide.

12 C.(1) If there is an initial deposit made with the Public Service
13 Commission by a qualified low carbon energy project, such initial deposit shall
14 be used by the Public Service Commission exclusively for the purposes as
15 provided in R.S. 30:1004(C)(2) and shall be so used prior to the distribution to
16 the Public Service Commission of any royalties, rentals, bonuses or payments
17 deposited into the fund.

18 (2) If the initial deposit has been exhausted, the royalties, rentals,
19 bonuses and payments due to the state shall be deposited into such fund subject
20 to the maximum amount of the fund as provided in Subsection E of this Section,
21 and may thereafter be utilized by the Public Service Commission as provided
22 in R.S. 30:1004. The Public Service Commission shall promptly notify the
23 secretary when the initial deposit has been exhausted.

24 D. The royalties, rentals, bonuses and payments due to the state from a
25 qualified low carbon energy project, to the extent it is not subject to any rate
26 order of the Public Service Commission, shall be deposited into the fund and
27 may be utilized by the secretary, as provided in R.S. 30:1004.

28 E. The fund shall not exceed one hundred fifty million dollars per
29 qualified low carbon energy project, on an average daily basis for the period of

1 twelve consecutive months, and, if the monies in the fund exceed such amount,
2 any excess monies in the fund shall be transferred by the secretary to the
3 general fund. However, such transfer shall not occur more often than once
4 every twelve consecutive months.

5 F.(1) The total amount of incentive money to be made available to a
6 qualified low carbon energy project, to the extent it is not subject to any rate
7 order of the Public Service Commission, shall be three hundred million dollars
8 per project.

9 (2) After the exhaustion of the initial deposit, the total amount of
10 incentive money to be made available to the Public Service Commission with
11 regard to a qualified low carbon energy project that is subject to a rate order
12 from the Public Service Commission shall be four hundred million dollars.

13 (3) After the total amount of incentive monies have been provided with
14 respect to any qualified low carbon energy project, no royalties, rentals,
15 bonuses, or payments due to the state produced by enhanced oil or gas recovery
16 related to injection of carbon dioxide produced from such qualified low carbon
17 energy project shall be deposited into the fund.

18 (4) After the total amount of incentive monies have been provided with
19 respect to a qualified low carbon energy project, any sums attributable to
20 royalties, rentals, bonuses, or payments due to the state produced by enhanced
21 oil or gas recovery attributable to injection of carbon dioxide produced from
22 such qualified low carbon energy project remaining in the fund shall be
23 transferred by the secretary to the general fund.

24 G. If any portion of the initial deposit remains in the fund thirty years
25 after such deposit was made, the Public Service Commission shall return such
26 remaining portion of the initial deposit to the owner of the qualified low carbon
27 energy project that made such initial deposit, or its successor. If no such owner
28 or successor exists, then the money shall be transferred to the general fund.

29 H. The secretary shall keep accurate accounts of all receipts and

disbursements related to the administration of the fund, and be authorized to require the Public Service Commission to provide an annual accounting of any monies received from the fund. The carbon dioxide produced by a qualified low carbon energy project and utilized in enhanced oil or gas recovery pursuant to the provisions of this Chapter shall be metered or otherwise measured to provide an accurate tracking of the amount of such carbon dioxide so utilized. However, the operator conducting the enhanced oil or gas recovery activities shall be permitted to physically inject, for purposes of enhanced oil or gas recovery under the provisions of this Chapter, carbon dioxide, whether anthropogenic or naturally occurring, other than the carbon dioxide produced by a qualified low carbon energy project, provided the operator can show to the secretary's satisfaction that the metered or measured amount of carbon dioxide received by the operator from a qualified low carbon energy project matches the amount of other carbon dioxide utilized in the enhanced oil or gas recovery operations.

Section 2. R.S. 39:94(A)(2)(a)(iv) is hereby enacted to read as follows:

§94. Budget Stabilization Fund

A. There is hereby created in the state treasury a special fund to be designated as the Budget Stabilization Fund, hereafter referred to in this Section as the "fund", which shall consist of all money deposited into the fund in accordance with Article VII, Section 10.3 of the Constitution of Louisiana. Money shall be deposited in the fund as follows:

* * *

(2)(a) All revenues received in each fiscal year by the state in excess of eight hundred fifty million dollars, hereinafter referred to as the "base", as a result of the production of or exploration for minerals, hereinafter referred to as "mineral revenues", including severance taxes, royalty payments, bonus payments, or rentals, and excluding such revenues designated as nonrecurring pursuant to Article VII, Section 10(B) of the Constitution of Louisiana, any such revenues received by the

state as a result of grants or donations when the terms or conditions thereof require otherwise and revenues derived from any tax on the transportation of minerals, shall be deposited in the fund after the following allocations of said mineral revenues have been made:

* * *

(iv) As provided in Chapter 10 of Title 30 of the Louisiana Revised Statutes of 1950.

* * *

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by J. W. Wiley.

DIGEST

Morrish (SB 739)

Proposed law establishes the Louisiana Carbon Capture and Enhanced Oil Recovery Act.

Proposed law declares the public policy of Louisiana for the capture and geologic sequestration of carbon dioxide for the benefit of the citizens of the state and the state's environment by reducing greenhouse gas emissions.

Proposed law defines the following terms: carbon dioxide, department, enhanced oil or gas recovery, fund, gas, oil, person, qualified low carbon energy projects, and secretary.

Proposed law authorizes the secretary of DNR to certify, based on the evaluation of the technology assessment division of the department, any project as a qualified low carbon energy project if the project commences construction on or before Dec. 31, 2020, and meets the requirements of proposed law.

Proposed law provides that the secretary will issue a certificate to the project that such project is a qualified low carbon energy project.

Proposed law provides that after the secretary issues a certificate certifying a project as a qualified low carbon energy project:

- (1) The Public Service Commission ("PSC") is granted jurisdiction to entertain a request by any qualified low carbon energy project for a rate order from the PSC that includes a request that the PSC utilize the fund as provided in R.S. 30:1005, and any ensuing order of the PSC granting such request shall require the project to deposit with the PSC, upon commercial operation, up to one hundred fifty million dollars ("initial deposit") depending on the size or portion of the project subject to the order. The initial deposit shall be held in trust and controlled by the PSC through a third-party administrator, with the expenses of the administration of such fund to be paid from the initial deposit, but such deposit, unless and until used by the PSC as provided herein, shall remain the property of the owner of the qualified low carbon energy project which made the initial deposit.
- (2) The secretary must do the following:
 - (i) Make the monies in the fund attributable to any qualified low carbon energy

project that obtains a rate order from the PSC available to be utilized by the PSC, upon request by the PSC and presentation of documentation supporting such request, to offset or ameliorate the effect of such project on the electric bills of the ratepayers under its jurisdiction after the commercial operation date of the project, as provided in proposed law, but only after the initial deposit has been exhausted.

- (ii) Make the monies in the fund available to any qualified low carbon energy project to the extent such project is not subject to any rate order of the PSC, in accordance with an irrevocable and binding agreement with the department, to offset, reimburse or ameliorate capital costs or debt service incurred by the owner of such project and related to such project after its commercial operation date, as provided in proposed law.

Proposed law requires the secretary of DNR to provide to the PSC or to a qualified low carbon energy project, to the extent such project is not subject to any rate order of the PSC, with monies from the fund that are generated through enhanced oil or gas recovery utilizing carbon dioxide from such project.

Proposed law provides that monies in the fund generated by enhanced oil or gas recovery attributable to one project shall not be provided to or for the benefit of another project. Further provides that if a portion of the output of a project is subject to a rate order of the PSC, the monies in the fund attributable to enhanced oil or gas recovery utilizing carbon dioxide from the portion of the project that is subject to a rate order of the PSC will be provided exclusively to the PSC, and the monies in the fund attributable to enhanced oil or gas recovery utilizing carbon dioxide from the portion of the project that is not subject to a rate order of the PSC will be provided exclusively to the owner of the project.

Proposed law provides that once the secretary issues the certificate and determines the appropriate recipient of monies from the fund, such monies are dedicated and obligated to the purposes and uses authorized by proposed law.

Proposed law creates the Carbon Dioxide Project Incentive Fund in the custody of the state treasurer, which will constitute a special custodial trust fund which will be administered by the secretary of DNR, who will make disbursements from the fund solely in accordance with proposed law.

Proposed law provides that the fund cannot be used for any other governmental purposes, nor can any branch of government be allowed to borrow any portion of the funds. Further provides that it is the intent of the legislature that this fund and its increments will remain intact and inviolate.

Proposed law provides that the monies in the fund will be invested by the treasurer in the same manner as monies in the state general fund, all interest earned on the money invested from the fund by the state treasurer will be credited to the fund, and all unexpended and unencumbered monies in the fund at the end of the fiscal year will remain in the fund, except as provided in proposed law.

Proposed law provides that 50% of royalties, rentals, bonuses and payments due to the state and attributable to enhanced oil or gas recovery related to injection of carbon dioxide produced from qualified low carbon energy projects will be deposited into the fund, but only after the amount provided in Article VII, Section 10.3(A)(2)(a) of the Constitution of Louisiana and R.S. 39:94(A)(2)(a), referred to as the "base", has been satisfied each fiscal year, and which 50% portion will be applied only to the increase in production of oil or gas resulting from the injection of such carbon dioxide.

Proposed law provides that if there is an initial deposit made with the PSC by a qualified low carbon energy project, such initial deposit can be used by the PSC as provided in proposed

law and will be so used prior to the distribution to the PSC of any royalties, rentals, bonuses or payments deposited into the fund.

Proposed law provides that if the initial deposit has been exhausted, the royalties, rentals, bonuses and payments due to the state will be deposited into such fund subject to the maximum amount of the fund as provided in proposed law, and may thereafter be utilized by the PSC, as provided in proposed law. The PSC shall promptly notify the secretary when the initial deposit has been exhausted.

Proposed law requires that the royalties, rentals, bonuses and payments due to the state from a qualified low carbon energy project, to the extent it is not subject to any rate order of the PSC, be deposited into the fund and may be utilized by the secretary of DNR, as provided in proposed law.

Proposed law provides that the fund cannot exceed \$150 million dollars per qualified low carbon energy project, on an average daily basis for the period of 12 consecutive months, and, if the monies in the fund exceed such amount, any excess monies in the fund shall be transferred by the secretary to the general fund. Further provides that such transfer will not occur more often than once every 12 consecutive months.

Proposed law provides that the total amount of incentive money to be made available to a qualified low carbon energy project, to the extent it is not subject to any rate order of the PSC, will be \$300 million dollars per project.

Proposed law provides that after the exhaustion of the initial deposit, the total amount of incentive money to be made available to the PSC with regard to a qualified low carbon energy project that is subject to a rate order from the PSC will be \$400 million dollars.

Proposed law provides that after the total amount of incentive monies have been provided with respect to any qualified low carbon energy project, no royalties, rentals, bonuses, or payments due to the state produced by enhanced oil or gas recovery related to injection of carbon dioxide produced from such qualified low carbon energy project will be deposited into the fund.

Proposed law provides that after the total amount of incentive monies have been provided with respect to a qualified low carbon energy project, any sums attributable to royalties, rentals, bonuses, or payments due to the state produced by enhanced oil or gas recovery attributable to injection of carbon dioxide produced from such qualified low carbon energy project remaining in the fund will be transferred by the secretary to the general fund.

Proposed law requires the PSC to return any portion of the initial deposit remaining in the fund 30 years after such deposit was made to the project owner or its successor. Further provides that if no such owner or successor exists, then the money will be transferred to the general fund.

Proposed law requires the secretary to keep accurate accounts of all receipts and disbursements related to the administration of the fund, and authorizes the secretary to require the PSC to provide an annual accounting of any monies received from the fund.

Proposed law provides that the carbon dioxide produced by a qualified low carbon energy project and utilized in enhanced oil or gas recovery pursuant to the provisions of proposed law will be metered or otherwise measured to provide an accurate tracking of the amount of such carbon dioxide so utilized. Further provides that the operator conducting the enhanced oil or gas recovery activities will be permitted to physically inject, for purposes of enhanced oil or gas recovery under the provisions of proposed law, carbon dioxide, whether anthropogenic or naturally occurring, other than the carbon dioxide produced by a qualified low carbon energy project, provided the operator can show to the secretary's satisfaction that the metered or measured amount of carbon dioxide received by the operator from a qualified

low carbon energy project matches the amount of other carbon dioxide utilized in the enhanced oil or gas recovery operations.

Present law provides for the allocation of monies in the Budget Stabilization Fund.

Proposed law provides that royalties, rentals, bonuses and payments due to the state and attributable to enhanced oil or gas recovery related to injection of carbon dioxide produced from qualified low carbon energy projects will be deposited into the Carbon Dioxide Project Incentive Fund and not into the Budget Stabilization Fund.

Effective August 15, 2010.

(Adds R.S. 30:1001-1005 and R.S. 39:94(A)(2)(a)(iv))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill.

1. Changed the commissioner of conservation to the secretary of the Dept. of Natural Resources.
2. Provided relative to policy and jurisdiction.
3. Deleted and revised certain definitions.
4. Provided relative to the duties and powers of the secretary.
5. Authorized the Public Service Commission to consider requests for certain rate orders.
6. Provided relative to monies in the fund attributable to qualified low carbon energy projects and rate orders.
7. Provided for the administration of monies placed into the fund.